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March 7, 2002

Via Courier
Via E-mail
Via Mail

Mary L. Cottrell
Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: Boston Edison Company, D.T.E. 01-108
Reply Brief of the MWRA

Dear Secretary Cottrell:

Pursuant to the procedural schedule adopted in the above referenced proceeding, the Massachusetts Water Resources Authority ("MWRA") hereby by files this letter with the Department of Telecommunications and Energy ("Department" or "DTE") as its Reply Brief. This "reply" is provided for the limited purpose of addressing those portions of the Initial Brief of Boston Edison Company ("the Company" or "Edison")[1] where a response is necessary to assist the Department in its deliberations. Therefore, silence in regard to any assertion, position or argument in the Company's brief should not be interpreted, treated or otherwise construed to constitute agreement, assent, or acquiescence by the MWRA. Attached hereto are the MWRA's Proposed Findings of Fact and Conclusions of Law.

INTRODUCTION

On Brief, Edison continues to advance the same limited position set forth in the cover letter for its December 14, 2001, proposal to modify Rate WR and in the testimony of Henry LaMontagne: (i) that the sole customer on Rate WR (the MWRA) "has elected to leave Standard Offer Service and has commenced receipt of generation supply from a competitive supplier"; (ii) that "the statutory discount is no longer

[1] On the same day, the Attorney General filed a single page letter as "comments in lieu of an Initial Brief." In those "comments," the Attorney General stated that he "takes no position at this time on the Company's proposed revisions to Rate WR," but reserved his right to file a Reply Brief.

applicable"; so (iii) "Boston Edison has proposed to conform Rate WR to all of its other rates to provide a fully unbundled rate design with full undiscounted recovery of all prescribed rate elements." BECo Br., pp. 1-2. While the Company's brief provides a more complete exposition of its position, for the reasons discussed below, that position continues to lack merit and should be rejected by the Department.

EDISON CONTINUES TO ADVANCE A FLAWED PREMISE

Edison Must Establish The Reasonableness Of The Proposed Modifications To Rate WR Regardless Of The Applicability Of The Section 1B(e) Rate Cap

Notwithstanding the numerous suggestions made by Edison on brief, BECo Br. pp. 1-2, 5-6, 8-9, Edison bears the burden to establish the reasonableness of the proposed changes to Rate WR regardless of whether that rate is or is not covered by the rate cap in G.L. c. 164, § 1B(e). Nothing in the 1997 Restructuring Act amended G.L. c. 164, § 94 to alter the burden borne by a utility proposing a rate change and nothing in any Department order has suggested that its 1998 determinations in regard to the appropriate design and structure of Rate WR were "interim" in nature, subject to modification upon the election by the MWRA to leave Standard Offer service. However, other than to suggest that savings the MWRA has achieved on its own and at its own risk should be considered as mitigating the unreasonable impact of its proposal[2], BECo, Br. pp. 10-11, Edison has not made any attempt to establish the reasonableness of its proposal.

Rate WR Is Not Required To Incorporate The "Uniform" Transition Charge

While the Company acknowledges that its entire case rests on its view that there is "a firm legal requirement" that each rate class pay a uniform Transition Charge, BECo Br. pp. 2 and 9, it fails to address, much less reconcile its view with the fact that: (i) the Department has already rejected the application of a uniform Transition Charge for Rate WR, (ii) prior to the approval of the settlement of *Boston Edison Company*, D.T.E. 00-82, various other rate classes did not pay the "uniform" Transition Charge[3], and (iii) individual customers in other rate classes continue to pay differing Transition Charges based upon their load characteristics. Instead, it relies on language in its Restructuring

[2] Notwithstanding the speculative nature of Edison's analysis of the market savings achieved by the MWRA, the MWRA submits that the entire question of the net savings, or the lack thereof, achieved as a result of its acquisition of an alternative source of power in the market is completely irrelevant to the question of whether M.D.T.E. No. 974 would be a just and reasonable rate for Edison's services and whether it would result in undue discrimination against the MWRA.

[3] Edison does acknowledge its past practice in a footnote, but does not address how its past practice is consistent with its position that payment of a uniform Transition Charge is "a firm legal requirement." Instead, the Company follows the acknowledgment of its long-standing violation of the purported "firm legal requirement" with the wildly contradictory assertion that a "uniform cents per kilowatt-hour access charge is how all of Boston Edison's (and, to the best of our knowledge, all other Massachusetts distribution utilities') rates have been designed, and annually reconciled, since the start of restructuring." *Compare* BECo Br., p. 8, n. 7 *with* p. 9.

Settlement Agreement and a broad assertion about the desirability of uniformity among Massachusetts' distribution utilities to supply the support for its position that is missing in the General Laws and the Department's Restructuring Regulations. BECo Br. p. 9. It fails to address the fact that the Department has already determined that Rate WR is not covered by the 1997 Settlement Agreement, that the Department has already rejected the incorporation of the "uniform" Transition Charge in Rate WR, and that, notwithstanding the result announced in the earlier decision in *Fitchburg Gas & Electric Light Company*, D.P.U./D.T.E. 97-115/98-120 (1999), the Department has indicating a willingness to consider proposals for reduced Transition Charges where, as here, they are supported by compelling arguments. In all, the Company has failed to support its position regarding a requirement for the payment of a uniform Transition Charge.

EDISON'S DISMISSAL OF THE DECISION IN D.T.E 99-107 IS WITHOUT MERIT

On Brief, the Company attempts to circumvent the preclusive effect of the Department's decision in D.T.E. 99-107 by suggesting that the MWRA has given an unreasonable interpretation to the Department's seemingly clear and purposeful language and that the MWRA has taken the position that it "would never face a change in Transition or Distribution Charges in any future tariff filing..." BECo Brief, pp. 14-15. Nothing could be further from the truth. The MWRA's position is that when the Department said,

> [t]he selection of a competitive supplier would not change the transition and distribution charges under Rate WR because the WR rate is not tied to the generation supply of MWRA's electricity costs

Boston Edison Company, (Phase II) D.T.E. 01-107, p. 10 (2000), it meant that the mere fact that the MWRA had elected a competitive supply of power could not used by Edison, as it is seeking to do here, to support a change in either the transition or the distribution charges in Rate WR. MWRA has not ever asserted that Rate WR Distribution or Transition Charges could never be changed. Its position is only that a change in its supplier of power, without anything more, cannot support a change in these rates. This is hardly an overly broad interpretation or an interpretation that goes beyond the issue then before the DTE: "MWRA's concern that the settlement may create uncertainty as to MWRA's liability for transition charges if its seeks competitive power." *Id.* Moreover, notwithstanding Edison's suggestion to the contrary, the MWRA submits that the above quoted language should not be considered to have been limited in any way by the Department's express reservation of the issue of the determination of an appropriate apportionment of Rate WR into separate distribution and transition changes. While that issue was not resolved in D.T.E. 99-107, its practical impact had been mooted by the settlement that the Department approved. Moreover, as was again made plain by the Company both here and in D.T.E. 99-107, Edison had agreed to a method for determining the Rate WR distribution charge only for purposes

of that case alone.[4] The Department reserved that issue because it was not yet ripe for a resolution.

EDISON IGNORES THE COST BASIS FOR A REDUCED RATE WR TRANSITION CHARGE

Notwithstanding the plain fact that the level of costs allocated to Rate WR prior to restructuring was less than the sum of the transmission, transition, and standard offer charges that would have been assigned to that rate through a strict application of the methodology in the Edison Restructuring Settlement Agreement,[5] the Company argues that the Department's current approach to Rate WR "has been justified solely by the fact that the MWRA has been a recipient of the Standard Offer Service and thereby guaranteed an overall rate discount." BECo Br. p. 8. In particular, it argues that the Deer Island's facility's load characteristics "are not necessarily unique among other Boston Edison customers at all" and suggests that the MWRA should be happy to be able to "take advantage of these characteristics" in the competitive market for power. *Id.* pp. 13-14. This position is without merit.

First, the plain and undeniable truth here is that the Department's approach to Rate WR is a result of and justified by the fact that the level of costs that the Company sought to allocate to Rate WR in 1997 had not been allocated to that rate prior to restructuring. This was and is true without any consideration of the rate reductions required by the Restructuring Act. As the MWRA explained in its Initial Brief, there was a cost basis for the Department's 1998 decision to refrain from incorporating the "uniform" transition charge into Rate WR, MWRA Brief, pp. 12-15, and Edison has not offered any factual or legal basis to refute that earlier decision.

Second, whatever the new-found views of Edison's lawyers concerning the uniqueness of the Deer Island facility's load, as the MWRA explained in its Initial Brief, Edison's own expert witnesses[6] and the Department have long recognized the unique nature of that load. MWRA Initial Brief at pp. 12-15. The Company should not now be allowed to "adjust" Rate WR to eliminate recognition of the characteristics that gave rise to the need for and design of a new and separate rate in the first place. Notwithstanding the fact that those significant differences between the Rate WR load and that of the

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[4] *See* Exh. DTE-1-4(B), p. 9 (LaMontagne rebuttal testimony in 99-107); Tr. pp. 134-135.

[5] As Ms. Smith testified and Mr. LaMontagne agreed, prior to restructuring the MWRA paid 6.485¢/kWh and, under a strict application of the Restructuring Settlement Agreement, the sum of the three referenced rate elements alone would have equaled 6.56¢/kWh. Exh. MWRA-LS, pp. 4-5; Tr. 37.

[6] In explaining the difference between the level of the proposed Rate WR and the G-3 rate, the Company's witness relied not only on the differences that are reflected in the very low Rate WR "distribution" charge, but also on differences that were reflected in the allocation of responsibility for generation costs: "those kind of characteristics just aren't reflected in the G-3 class certainly and we don't believe, really, by any other customer." RR-A G-a-B, p. 54.

Company's other customers resulted in the need for and the design of a separate rate, *see* RR-AG-1-B, pp. 53-55, the Company's proposal would effectively restructure Rate WR to eliminate any recognition of those characteristics. In essence, Edison has proposed to take a rate conceived and designed in response to the peculiar characteristics of a load -- characteristics that, on a proportional basis, would result in substantially lower capacity costs than any customer -- and modify it to eliminate any recognition of those characteristics. While the Company may be correct that those very favorable load characteristics will be recognized in the power market, those characteristics are also directly related to generation and, by definition, Transition Costs. They should continue to be recognized in the allocation of Transition Cost responsibility to Rate WR. Recognition of these characteristics is given in the allocation of Transition Cost responsibility to individual customers on other rates. Exh. MWRA-LS, p. 8. The MWRA submits that it would be the height of unreasonable and irrational discrimination to deny the MWRA the same treatment solely because the favorability of its load characteristic was so disproportionate that it required its own rate class. The Company's own cost studies suggest "production" or generation cost differentials that are roughly equal to the current difference between the level of the "uniform" Transition Charge and the amount implicit in the current WR Rate .The Company should not be heard to deny that those differentials are appropriately reflected in the allocation of Transition Cost responsibility to Rate WR.[7] BECo Br. pp. 13-14, 16 ("this approach is completely arbitrary").

CONCLUSION

For the reasons set forth here and its Initial Brief, the MWRA again urges the Department to reject Boston Edison's proposed new tariff, M.D.T.E. No. 974 and to either order the Company to maintain M.D.T.E. No. 976 in effect or direct the Company to modify that tariff to incorporate unbundled delivery service elements determined by the method recommended by Ms. Lee Smith.

Respectfully submitted,
MASSACHUSETTS WATER
RESOURCES AUTHORITY

By its attorneys,

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[7] As is explained in the Initial Brief of the MWRA, difference between the generation costs allocated to all electric service customers and Rate WR in the Company's two most recent cost of service studies was more than 8 mils, which is very near to the level implicit in Rate WR, particularly when consideration is given to the fact that the test period for these two studies would not have encompassed the post-construction period in which the Deer Island facility would more fully exhibit its extremely favorable load characteristics. *See* Tr. pp. 139-140.

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